

STATE OF MONTANA TERM CONTRACT

Department of Administration
State Procurement Bureau
165 Mitchell Building
PO Box 200135
Helena, MT 59620-0135
Phone: (406) 444-2575 Fax: (406) 444-2529
TTY Users-Dial 711
<http://www.mt.gov/doa/gsd>

T.C. #: SPB06-1076D
Title: FUEL CARD MANAGEMENT SERVICES
This is an exclusive contract.

CONTRACT TERM	FROM	MARCH 20, 2006	CONTRACT STATUS	NEW (XX)
	TO	JANUARY 19, 2009		RENEW ()
VENDOR ADDRESS	SEE REMARKS		ORDER ADDRESS	SEE REMARKS
ATTN:			ATTN:	
PHONE:			PHONE:	
FAX:			FAX:	
E-MAIL:			E-MAIL:	
PRICES:	PER CONTRACT			
DELIVERY:	PER CONTRACT			
F.O.B.:	PER CONTRACT			
TERMS:	PER CONTRACT			
REMARKS:	COMDATA CORPORATION TOM GUSTIN 5301 MARYLAND WAY BRENTWOOD, TN 37027 (406) 443-2022		TRANSMONTAIGNE PRODUCT SERVICES INC. ROB RYAN SUITE 3200 1670 BROADWAY DENVER, CO 80217-5660 (303) 860-5301	
IFB/RFP No.: SPB06-1076D		Rhonda R. Grandy, CONTRACTS OFFICER DATE:		
AUTHORIZED SIGNATURE				

FUEL CARD MANAGEMENT SERVICES

STANDARD TERMS AND CONDITIONS

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set

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for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.mt.gov/doa/gsd/procurement/reciprocalpreference.asp>.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business. If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

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SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313(4).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

Revised 7/05

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CONTRACT

1. Parties
2. Effective Date, Duration and Renewal
3. Exclusive Contract
4. Cooperative Purchasing
5. Services and/or Supplies
6. Consideration/Payment
7. Access and Retention of Records
8. Assignment, Transfer and Subcontracting
9. Hold Harmless/Indemnification
10. Required Insurance
11. Compliance With Workers' Compensation Act
12. Compliance With Laws
13. Contract Termination
14. Event of Breach - Remedies
15. Waiver of Breach
16. Liaison and Service of Notices
17. Meetings and Reports
18. Transition Assistance
19. Contractor Performance Assessments
20. Choice of Law and Venue
21. Scope, Amendment and Interpretation
22. Execution

FUEL CARD MANAGEMENT SERVICES

1. **PARTIES**

THIS CONTRACT, is entered into by and between the State of Montana, Department of Administration, State Procurement Bureau, (hereinafter referred to as "the State"), whose address and phone number are P.O. Box 200135, Helena, MT 59620-0135, (406) 444-2575 and **Comdata Corporation and TransMontaigne Product Services Inc.**, a Joint Venture, (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Numbers, addresses and phone numbers are:

COMDATA CORPORATION
FEDERAL ID # 62-0813252
5301 MARYLAND WAY
BRENTWOOD, TN 37027
(615) 376-6902

TRANSMONTAIGNE PRODUCT SERVICES INC.
FEDERAL ID # 84-1477374
SUITE 3200
1670 BROADWAY
DENVER, CO 80217-5660
(303) 860-5301

THE PARTIES AGREE AS FOLLOWS:

2. **EFFECTIVE DATE, DURATION, AND RENEWAL**

2.1 Contract Term. This contract shall take effect on March 20, 2006, and terminate on January 19, 2009, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.) The contractor will have 90 days to transition all accounts from current.

2.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of seven years. This renewal is dependent upon legislative appropriations.

3. **EXCLUSIVE CONTRACT**

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is considered to be an "Exclusive" use contract and state agencies must obtain the specified product/service from the contract holder(s), unless the contract allows otherwise. However, the State Procurement Bureau does not guarantee any minimum usage totals and it is the individual agency's responsibility to comply with the terms of the contract. The State reserves the right to establish a separate contract with the Contractor for a personal liability travel card, or to issue a separate, negotiated solicitation as the State's needs may warrant.

4. **COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units for the purposes of this contract will be local or state public procurement units of this state or a tribal procurement unit of this state. Therefore, these public procurement units will have the option to participate in this contract after award. A list of registered public procurement units in Montana is available on the General Services Division website at: <http://www.mt.gov/doa/gsd/local/cooperativepurchasingprogram.asp>. The State accepts no responsibility for payment by the public procurement units.

5. **SERVICES AND/OR SUPPLIES**

Contractor agrees to provide to the State the following Montana Public Fueling Program services:

FUEL CARD MANAGEMENT SERVICES

5.1 Account Management. The Contractor shall provide administrative account management in support of the Montana Public Fueling Program by appointing an account manager who will assume overall responsibility for the coordination of all contract issues.

5.2 Customer Support. The Contractor shall provide customer support service to all Montana Public Fueling Program accounts and users to resolve problems, answer questions, deal with lost or stolen cards, and support in general all aspects of the Montana Public Fueling Program. At a minimum, the customer support service must be provided by skilled technicians who are proficient in the English language and include a toll free telephone line for assistance on a 24-hour-a-day, 7-day-a-week basis. In addition, Contractor shall provide direct telephone access to account representatives for inquiries involving accounts, billings, and all technical support questions that arise during the course of a regular business day between the hours of 8 a.m. to 5 p.m., Monday through Friday.

800-741-4040 (Program Services)	24 hours per day / 7 days per week
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5.3 Training. The Contractor shall provide training and associated materials to Montana Public Fueling Program accounts and technical support staff that details how to use the account controls and assists the agencies in developing individual spending limitations and other program restrictions and controls. At a minimum, this training must be provided at contract implementation and then annually during the entire term of the contract. In addition, training should be provided any time there is a major software upgrade.

5.4 Management Reports. The Contractor shall provide the State with monthly management reports throughout the duration of the contract. These reports shall be available in an electronic format compatible with Microsoft Office products and accessible to state agencies from the Contractor's software system. Contractor will utilize commercially reasonable efforts to capture and report level 3 transaction data.

5.5 Card Services. The following bank services are the minimum acceptable to the State:

- a. **Toll-Free Telephone.** The Contractor shall provide a toll-free telephone number with 24-hour availability;
- b. **Website.** The Contractor shall provide a website for problem technical issues and problem solving;
- c. **Off-site Storage of Data.** The Contractor shall provide, at its location, complete and secure data storage for all State of Montana credit card and transaction information. The Contractor shall provide electronic archival data to each Company as requested. Offeror shall produce a comprehensive backup and disaster recovery plan for state purchasing card data;
- d. **IT Support.** The Contractor shall provide information technology (IT) support by trained and experienced IT personnel;
- e. **On Demand Data Access.** The Contractor shall provide, as requested, complete and separate credit card and transaction information for any of the identified companies. In addition, the Contractor will provide complete documentation of table structure, relationships, etc., of database so that the data can be uploaded to a local database to allow for ad hoc queries in order to satisfy internal and external audit requirements;
- f. **Payment Methods.** The Contractor shall provide payment methods, including a description of wire transfer protocols supported;
- g. **Transaction Dispute Process.** The Contractor shall provide a transaction dispute process with online and/or offline capabilities;
- h. **Lost/Stolen Card Process.** The Contractor shall provide a process for handling lost/stolen purchasing cards to minimize any potential loss;
- i. **Transaction Data Strategy.** The Contractor shall provide a long-term plan for increasing the level of data that is passed with regard to level 1, 2, and 3 transaction data;
- j. **Fraud/Loss Provisions and Fraud Security Notification System.** The Contractor shall have in place a system to monitor and identify suspect cardholder transactions, including reports of declined

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transactions by account and shall provide a fraud security notification system that protects the State against unauthorized or irregular card use;

- k. **Third Party Services.** The Contractor shall provide documentation detailing all third party dependencies, including processes that are used by its system.

5.6 Software/Technology Compatibility. The Contractor's software must be able to seamlessly produce upload files that comply with the specifications of each agency different systems.

5.7 Conversion and Implementation Plan. The Contractor shall work with each account to plan and implement a conversion of the existing cardholder database into the Contractor's purchasing card system and assist each Company in making a successful migration to the Contractor's system, including card issuance. The conversion process must meet with the approval of the State Program Manager.

5.8 Technical Support. The Contractor shall provide all necessary technical support to transition to the new purchasing card program within a mutually agreed to timeframe. The Contractor shall provide all necessary technical support over the course of the contract to resolve problems or make any program adjustments that become necessary due to any information technology changes or advances, etc. Technical support personnel must be adequately trained in their area of support and be proficient in the English language.

5.9 Software/Technology. The Contractor's proposed software must be browser-based, robust, functional, easily navigable, and secure. It shall allow for functional and easy management of cardholder accounts and comprehensive reporting. The Contractor's software shall allow the State to create transaction files to upload into the Banner, PeopleSoft, and Department of Transportation's accounting systems. The Contractor's software must be capable of adapting to any changes to the State's accounting systems so that the fuel card interface can continue to generate transactions in any new accounting system adopted by the State. The Contractor's software/technology at a minimum must provide the following features:

- a. **Browser-based Access** to Contractor's purchasing card software must be through a standard browser (IE5 or greater) with a minimum of downloaded additions;
- b. **Ease of Use and Flexibility;**
- c. **Security Features** to ensure secure data transfer between the Bank and the State of Montana as well as secure storage of cardholder, card number, and transaction information on bank file servers. Software shall provide means for users to establish and change their own passwords;
- d. **Security of Transaction Data, Card Numbers and Process Flow;**
- e. **Support for Real Time Access and Changes**, including account and hierarchy changes;
- f. **Archiving Features;**
- g. **Management Capabilities for Flat File Transfer** to the various state systems;
- h. **Ability to Migrate** Current Cardholder Information to the new system without the State having to submit new applications for existing cardholders;
- i. **Process to Feed/Provide Access** to the card data;
- j. **Global Program Defaults, Defaults by Company**, and the process of overriding these defaults for individual cards;
- k. **Standard Reporting Capabilities;**
- l. **Month-End Reporting Capabilities;**
- m. **Custom Reporting Capabilities;**
- n. **Standard Output Format for Reports**, e.g., pdf, Excel, Access, WORD, or other text formats; and
- o. **Documentation** to the Contractor's technology and services provided, including, but not limited to, the database structures, data dictionary, and online availability.

5.10 Fuel Card Product. The Contractor shall furnish credit cards at no cost to the State that meet the following requirements:

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- a. **Security and Controls.** The Contractor shall have in place security precautions and controls that will ensure the security of the purchasing card transactions. Contractor shall provide adequate security within the software package to preclude the cardholder or anyone else with approving power from abusing the system.
- b. **Spending and Transaction Limits.** The credit card shall provide spending limits by individual purchase, daily and cycle limits, and transaction count and have the provision to block by merchant category codes as determined by the program administrator for each state agency. Both the Contractor and the state agencies shall monitor the limits.
- c. **No Annual Fee.** The Contractor shall not charge an annual fee for credit cards issued under the contract.
- d. **No Cash Advances.** The Contractor shall not allow cash advances from Automatic Teller Machines or from any financial institution.
- e. **No List Sale or Distribution.** The Contractor shall not sell or distribute a list of participating agencies/institution addresses, cardholder names and addresses, or any other information to any person, firm, or other entity for any purpose; excluding, but not limited to, the associations, third-party service providers, merchants, and merchant processors, during the course of normal business operations.
- f. **An Electronic and/or Paper Application Process.** The Contractor will supply an electronic and/or paper application process that minimizes cardholder exposure to identity theft. Application forms will be mutually reviewed and approved for use by each Company.
- g. **Guaranteed Time for Issuance of Card by New Cardholder.** The Contractor must indicate a guaranteed time for issuance of card to a new cardholder after a valid and properly completed application is received by the Contractor.
- h. **Process and Time Required for Issuance of Renewal/Replacement Cards.** The Contractor will promptly issue renewal cards prior to card expiration date as well as replacement cards.

6. CONSIDERATION/PAYMENT

6.1 Payment Schedule. In consideration for the Fuel Card Management Services to be provided, the State shall pay according to the following schedule 30 days from receipt of invoice.

6.2 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

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Fees/Costs	One Time Setup Fee	Typical Yearly Cost
Software License Fees	No Fee	None
Setup Fees	No Fee	None
Standard Report Fees	No Fee	None
Programming Fees (related to card software modifications)	No Fee	None
Mapper Fees (programming fees associated with the production of different upload files for MDT and FWP.	No Fee	None
Transaction Fees	No Fee	None
Hosting Fees	No Fee	None
Customer Service Fees	No Fee	None
Conversion Fees	No Fee	None
Training and Implementation Fees	No Fee	None
Other Fees , i.e., replacement card overnight fee	No Fee	

Annual Fee Per Card/Account	No Fee
Interest Charges	No fee
Replacement Card Fee	No fee
Implementation and Training Costs	No fee
Online Access	No fee

6.3 Billing and Payment. Each Transaction is posted to an Account. The State / Cooperative Agencies will receive Statements at the conclusion of each Billing Cycle for all Account Transactions.

6.4 Billing Disputes. Billing disputes must be communicated in writing to Contractor at the address provided on the Statement. Contractor must receive written communication of a dispute within sixty (60) days of the date on the Statement on which the disputed or allegedly incorrect Transaction first appeared. Association regulations govern the resolution of all billing disputes.

6.5 Merchant Category Disclaimer. Upon request by the State, Contractor may either prevent or restrict usage of its card products to selected merchants based on Merchant Category Code. To the extent this is requested, the following disclaimers apply:

- a. **Incorrect Merchant Category Codes.** To the extent the State believes a merchant has not been assigned an accurate Merchant Category Code, Contractor will advise the customer of the inaccuracy. Whether or not the Merchant Category Code is changed is dependent upon applicable Association regulations.

6.6 Trailing Transactions. Upon cancellation of an Account, the State and/or Cardholder need to cancel the billing of all reoccurring Transactions to the Account.

6.7 Liability. Customer is solely liable to Contractor for all billed Transactions.

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- a. **Liability Exceptions.** Customer may be liable for all billed Transactions in the following circumstances:
- i. **Failure to Notify; Liability Exceptions.** The State shall immediately notify Contractor by telephone at **1-800-741-4040** of any of the following:
- (a) Termination of employment of any Cardholder and/or program representative;
 - (b) Any lost or stolen Fleet Card for which the State or Cardholder has knowledge or liability;
 - (c) Any compromised Account for which the State or Cardholder has liability and of which reasonably has knowledge; or
 - (d) Any compromised information regarding Fleet Cards, Accounts and/or other sensitive data including, but not limited to, Account numbers, personal identification numbers, passwords, or Cardholder information of which the Cardholder or State reasonably has knowledge.

The State shall provide sufficient information as may be requested by Contractor for Contractor to act on such notifications. Failure of the State to provide notification may result in the State's liability to pay for all Transactions on such Fleet Cards and/or Accounts. Liability is limited to the period of time from when notification should have been received to when notification is actually received and only for those Transactions that Contractor cannot either charge back to the merchant or collect directly from the Cardholder.

6.8 Delinquency. If the amount shown on the Statement as the current amount due has not been paid to Contractor by the State by the Due Date, Contractor shall have the following rights:

- a. **Suspension.** Contractor shall have the right to suspend any Account that is delinquent for a period exceeding two Billing Cycles.
- b. **Cancellation.** Contractor shall have the right to cancel any Account that is delinquent for a period exceeding three Billing Cycles.

7. ACCESS AND RETENTION OF RECORDS

7.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

7.2 Retention Period. The Contractor agrees to create and retain records supporting the Fuel Card Management Services for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

8. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

9. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims,

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demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

10. REQUIRED INSURANCE

10.1 General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

10.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

10.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

10.4 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

10.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

10.6 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

11. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, upon expiration.

12. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

13. CONTRACT TERMINATION

13.1 Termination for Cause. The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform the contract pursuant to Section 14, Event of Breach – Remedies.

13.2 Bankruptcy or Receivership. Voluntary or involuntary Bankruptcy or receivership by either party may be cause for termination; except that the State may not be terminated if its bankruptcy plan provides for continuation of these services.

13.3 Material Breach. The non-breaching party may terminate this contract in whole or in part in the event of the breaching party's failure to perform a material obligation of this contract.

14. EVENT OF BREACH – REMEDIES

14.1 Event of Breach. Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- a. products or services furnished by the Contractor fail to conform to any requirement of the contract, or
- b. failure to submit any report required hereunder; or
- c. failure to perform any of the other covenants and conditions of the contract, including beginning work under this contract without prior Department of Administration approval.

14.2 State's Actions in Event of Breach. Upon the occurrence of any event of breach, the State may take any one, or more, or all, of the following actions:

- a. give the Contractor a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater or lesser specification of time, 30 days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the Contractor notice of termination;
- b. give the Contractor a written notice specifying the event of breach and suspending all payments to be made under this contract and ordering that the portion of the contract price, which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the event of breach, shall never be paid to the Contractor;
- c. treat the contract as materially breached and pursue any of its remedies at law or in equity, or both.

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15. **WAIVER OF BREACH**

No failure by either party to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right to enforce each and all of the provisions hereof upon any further or other breach on the part of the breaching party.

16. **LIAISON AND SERVICE OF NOTICES**

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

Devin Garrity will be the liaison for the State.

Address: Room 165, Mitchell Building
P.O. Box 200135

Telephone Number: (406) 444-3366

Fax Number: (406) 444-2529

E-mail Address: <mailto:DGarrity@mt.gov>

Tom Gustin will be the liaison for the Contractor (Comdata).

Address: 5301 Maryland Way
Brentwood, Tennessee 37027

Telephone Number: (406) 443-2022

Fax Number: (406) 443-2994

E-Mail Address: TGustin@comdata.com

Rob Ryan will be the liaison for the Contractor (TransMontaigne).

Address: 1670 Broadway Suite 3200
Denver, CO 80217

Telephone Number: (303) 860-5301

Fax Number: (303) 626-6960

Cell: (303) 249-5092

E-Mail Address: RRyan@transmontaigne.com

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

17. **MEETINGS AND REPORTS**

17.1 Technical or Contractual Problems. The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. Failure to participate in problem resolution meetings or failure to make a good faith effort to resolve problems may result in termination of the contract.

17.2 Progress Meetings. During the term of the contract, the State's Project Manager will plan and schedule progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of the contract as required. At each such meeting, the Contractor shall provide the State with a written status

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report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under the contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

17.3 Failure to Notify. In the event Contractor fails to specify in writing any problem or circumstance with respect to the period during the term covered by Contractor's status report, it shall be conclusively presumed for purposes of this contract that no such problem or circumstance arose during such period, and Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for either claiming it is entitled to receive any amount (including without limitation damages or additional charges arising out of a breach by the State of any State obligation) with respect to any of Contractor's obligations hereunder in excess of those previously agreed to; or failing to complete any of Contractor's obligations hereunder. Submission by Contractor of the status reports shall not alter, amend or modify Contractor's or the State's rights or obligations pursuant to any provision of this Contract.

17.4 State's Failure or Delay. For a problem or circumstance identified in the Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the Parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. If the State does not agree as to the cause of such problem or circumstance, the Parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both Parties.

18. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The State will notify Contractor of any request for transition services, including any request to permit Cards or Accounts to be used for a limited transition period and the State will be liable for Debt incurred during such transition period in accordance with the terms of this contract. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. Upon cancellation or termination of this contract, including, if applicable, any transition period referenced under this Section 18, State will notify its Cardholders of such termination and instruct all Cardholders to cease using and destroy such Cards. State shall remain liable to Contractor for all Debts, including trailing transactions, arising from the use of a Card and/or Account.

19. **CONTRACTOR PERFORMANCE ASSESSMENTS**

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

20. **CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

21. **SCOPE, AMENDMENT AND INTERPRETATION**

21.1 Contract. This contract consists of 17 numbered pages, any Attachments as required, RFP06-1076D, as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

21.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

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22. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF
ADMINISTRATION

BY: _____
(Name/Title)

BY: _____
(Signature)

DATE: _____

COMDATA CORPORATION
FEDERAL ID # 62-0813252
5301 MARYLAND WAY
BRENTWOOD, TN 37027

TRANSMONTAIGNE PRODUCT SERVICES INC.
FEDERAL ID # 84-1477374
SUITE 3200
1670 BROADWAY
DENVER, CO 80217-5660

BY: _____
(Name/Title)

BY: _____
(Signature)

DATE: _____

BY: _____
(Name/Title)

BY: _____
(Signature)

DATE: _____